

U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington D.C.

July 22, 2016

**GOVERNMENT TO GOVERNMENT CONSULTATION WITH THE YAKAMA NATION
PORTLAND HARBOR SUPERFUND SITE PROPOSED PLAN**

DATE: July 25, 2016
LOCATION: Alm Room
MEETING TIME: 2:30 PM – 3:30 PM
YOUR TIME: 2:30 – 3:30 PM
FROM: Dennis McLerran, Region 10 Administrator

I. PURPOSE

YOU will meet with tribal council members of the Yakama Nation for a government-to-government consultation regarding the Portland Harbor Superfund Site Proposed Plan, per a request from the Yakama Nation (letter attached). As the signing official for the Portland Harbor Record of Decision, **YOU** will hear directly from tribal leaders about their concerns regarding the site cleanup and there will be an opportunity for them to ask questions.

Dennis McLerran and Jim Woolford participated in a government to government consultation with the Yakama Nation in February 2016 prior to the development of the Proposed Plan. After the Proposed Plan was published in June, the tribe declined a follow-up meeting with Dennis and Jim and specifically requested a meeting with **YOU**. Please note that Region 10 is currently holding consultations with the other five tribes in the Region. The public comment period for the proposed plan is June 9 to September 6, and any comments from the Yakama Nation will be incorporated into the Administrative Record and any responses to their comments will be included in the Record of Decision Responsiveness Summary.

As EPA Administrator, **YOU** will lead the meeting and welcome the Yakama Nation to EPA, however Dennis McLerran and Jim Woolford (who are participating via video conference) are the subject experts and are expected to handle substance related questions. The tribe has indicated that they will bring you a small gift, a framed poster of the Yakama Nation's imagine statement: *Imagine a clean and productive Columbia River that sustains the cultural practices of the Yakama members and improves life for our neighbors and future generations.* **YOU** will give them a small gift in return.

II. BACKGROUND

Please see the attached briefing paper for topics we expect the Yakama Nation to raise.

III. PARTICIPANTS

EPA:

YOU

Dennis McLerran, Region 10 Administrator (Video Conference)

Jane Nishida, Principal Deputy AA, OITA

JoAnn Chase, Director, AIEO

Jim Woods, Senior Policy Tribal Advisor, Region 10 (Video Conference)

Cyndy Mackey, OECA

Barry Breen, Principal Deputy AA, OLEM

Jim Woolford, Director, OSRTI, OLEM (Video Conference)

Ethan Shenkman, Deputy General Counsel

Karin Koslow, Deputy Director, AIEO

Andrew Baca, Senior Advisor, AIEO

Maria Elena Juarez, AIEO

Yakama Nation:

Delano Saluskin, Tribal Council Vice-Chairman

Davis Washines, General Council Chairman

Gerald Lewis, Fish & Wildlife Committee Chairman

Virgil Lewis, Law & Order Committee Chairman

Tom Zeilman, Attorney

George Waters, Legislative Advisor

Rose Longoria, Yakama Nation Fisheries, Regional Superfund Projects Manager

Laura Shira, Yakama Nation Fisheries, Professional Engineer

IV. SEQUENCE OF EVENTS

- **YOU** will facilitate brief introductions around the table
- **YOU** and Dennis McLerran will deliver brief remarks and thank the tribe for coming to Washington, DC
- Delano Saluskin, Tribal Council Vice-Chairman, Yakama Nation will provide brief remarks
- The tribe will provide their input on the Proposed Plan
- Open dialogue
- Wrap-up
- **YOU** will give brief closing remarks and thank the tribe again for coming to Washington, DC.
- **YOU** depart

V. PRESS

Closed press

VII. TALKING POINTS

- We appreciate the opportunity to speak directly with tribal leadership and you're your perspective on the Portland Harbor Superfund Site.
- We recognize the ceremonial and subsistence value of the Willamette and Columbia Rivers to the Yakama Nation, and EPA's responsibilities as trustees in cleaning up a century of contamination.
- EPA also recognizes that the Tribe has TREATY-reserved or other fishing RIGHTS in areas impacted by the Site.
- And EPA recognizes that the tribes have played an integral role in the Portland Harbor Superfund site, from advocating that the site be added to the National Priorities List, to participation on the Technical Coordinating Committee, a technical group that provided review and input on sampling plans, site investigation and data analysis reports as well as providing fish consumption data that were used for the risk assessment.
- We are currently in the public comment period and encourage the Yakama Nation to provide comments in writing for the record. We will also take notes at this meeting and add verbal comments to the record.
- We are still on track to complete the Record of Decision by the end of December. The proposed cleanup option dredges or caps 291 acres and almost 19,500 lineal feet of riverbank. This should improve river health and allow most people to eat more fish from the river. Fish advisories may be relaxed for all except the most sensitive populations (women of child bearing age and nursing infants). Improvement in habitat will support migratory species and contaminant loading to the Columbia River will be reduced to background levels. Although the area of dredging and capping is small compared to the 10-mile stretch of river, by containing or removing the most contaminated areas, lesser contaminated areas will be better able to recover naturally.
- The EPA and states have a variety of laws and regulations that address pollution within the Willamette River watershed overall. This Superfund cleanup addresses only part of this larger picture.

VIII. HOT TOPICS

Issue: Hanford Site, Richland Washington

Background/Status:

The Hanford cleanup has been ongoing for the last 25 years. The majority of the work has focused on protection of the Columbia River from soil and groundwater contamination. DOI and EPA consulted with the Yakama Nation the week of July 10th regarding cleanup along the River; during the meeting Chairman Goudy informed the Agencies that the Yakama Nation would like to become the 4th member of our Federal Facility Agreement. This is a follow up to a request that was made by the Yakama Tribe when the Agreement was developed in 1989. Although the likelihood of this occurring is remote, and no commitments were made, the conversation was

productive and all agreed to continue to meet at a government-to-government level and continue to factor the Yakama concerns into the process early. Other topics included the inability of the Energy Department to make significant progress on treating the 56 million gallons of liquid radioactive waste. The likelihood of these topics coming up at the meeting is high.

Issue: Air Quality Concerns in the Yakama Valley

Background/Status:

The PM_{2.5} levels in Toppenish and Yakima are near or above the NAAQS. Levels are increasing in the Toppenish area, on the Yakama Reservation. Significant sources are wood burning for home heat, agricultural and forestry burning, and wildfires. The CAFOs, both on and off the Yakama Reservation, generate numerous citizen complaints about odors and dust. Region 10 is working with the Yakama Nation on ways to include best management practices for CAFOs on the Reservation and to develop a PM Advance type program for the Reservation including alternatives to agricultural and backyard burning, improved implementation of existing regulations, education on woodstove use, and revisions to the FARR that may include limits on woodstoves. In late 2014 and summer 2015 the Agency for Toxic Substances and Disease Registry (ATSDR), at the request of Region 10, intensively sampled ammonia, hydrogen sulfide, PM₁₀ and PM_{2.5} near CAFOs on the Reservation. Region 10 is awaiting release of the data.

VII. ATTACHMENTS

Yakama Nation Bios and Photos

Background Information on Portland Harbor Superfund Site

PowerPoint Presentation Printout re Portland Harbor Superfund Site

Yakama Nation letter Request for Consultation with the EPA Administrator (with Response)

Yakama Nation Resolution re PH Site Cleanup

KEY PARTICIPANT BIOGRAPHIES



Davis Washines, Chair, Yakama Nation General Council

Davis Washines is the Chair of the Yakama Nation General Council. He was also the Chief of Police from the Columbia River Fisheries Enforcement Department from March 8, 2010 to August of 2013. Chief Washines has a combined 30 years in law enforcement that spans four decades. Chief Washines hopes to remain engaged in addressing tribal fishery and justice needs.



Gerald Lewis, Fish & Wildlife Committee Chairman

Gerald Lewis is the Assistant Secretary of the Yakama Nation Tribal Council. He is also Chairman of both the Fish and Wildlife Committee and the Cultural Committee, but he also sits on the Roads, Irrigation, and Land Committee as Secretary, is a member of the Veteran's Committee. A respected fisher and longhouse leader for the Yakama Nation, Lewis' ties to the Columbia River and its fisheries run strong and deep. Lewis was born in Toppenish, Wash., and raised in the small Yakama reservation community of White Swan, Wash.



Virgil Lewis Fish & Wildlife Committee Chairman

Virgil Lewis is a member of the Yakama Nation Tribal Council where he sits as the Chairman of the Roads, Irrigation, and Land Committee. He is also Chairman of the Law and Order Committee.



Rose Longoria, Yakama Nation Fisheries, Regional Superfund Projects Manager

Rose Longoria is the Regional Superfund Projects Coordinator at the Confederated Tribes and Bands of the Yakama Nation with responsibility to initiate and oversee response and restoration actions that affect Yakama Nation's Treaty reserved rights and interests throughout the Pacific Northwest. Rose's professional work experience at Benton County Clean Air Authority, Washington State Department of Ecology, and the Yakama Nation has provided her with over 20 years of environmental protection experience. Rose was born in Toppenish, raised in the Yakima Valley, and graduated from Heritage University with a Bachelors in Environmental Science.



Laura Shira, Yakama Nation Fisheries, Environmental Engineer

Shira has been an Environmental Engineer for Yakama Nation Fisheries Superfund Program since November 2015. She spent the previous nine years working for the Toxics Cleanup Program for WA State. Shira has an M.S. in Hydrology and Water Resources from the University of Arizona and a dual B.S. in Environmental Engineering and Secondary Education Teaching from Michigan Technological University.

PORTLAND HARBOR SUPERFUND SITE
BACKGROUND INFORMATION

I. SITE TIMELINE

- 2000 - Listed on National Priorities List (NPL)
- February 2016 – Remedial Investigation Report
- June 2016 – Feasibility Study and Proposed Plan
- June 9 – September 6 Public Comment Period (extended to 90 days)
- December 2016 – Record Of Decision

II. HISTORY

- Listing on the NPL was heavily supported by the six tribes, including the Yakama Nation. High levels of PCBs, dioxins/furans, PAHs, pesticides and other contaminants pose a risk to human health and the environment that will require cleanup in the Willamette River.
- Two miles downstream of the lower end of the Portland Harbor Superfund Site, the Willamette River flows into the larger Columbia River. The Columbia River is extremely important to many tribes, including the Yakama Nation and the site clean-up will prove challenging due to the size of the river and the varying environmental conditions and contaminant levels.
- There are numerous contaminants at the site that pose a risk to people and wildlife. Cancer risks to people are 100 times what is acceptable under the Superfund law and for the most sensitive population—nursing infants--more than 10,000 times the acceptable non-cancer risk. These risks are from consuming contaminated fish. Wildlife is also at risk from eating contaminated food (fish, worms, sediment, etc.).
- Our focus has been on the most prevalent contaminants: PCBs, dioxins/furans, DDT and its breakdown products DDE and DDD, and PAHs and some locations in the river have higher concentrations of contaminants than other locations.
- From our various studies, we know that people do consume fish from the river and that consumption poses a risk.
- Although there are more than 150 potentially responsible parties, only 10 signed an AOC to conduct the Remedial Investigation/Feasibility Study (RI/FS). The 10 parties are referred to as The Lower Willamette Group (LWG).
- There are more than 100 parties participating in an allocation group, the group tasked with allocating cleanup costs. EPA has no role in the allocation process.
- In January and February, 2016, Dennis McLerran and Jim Woolford consulted with 5 of the 6 Federally Recognized Tribes working on the site under a Memorandum of Agreement with EPA.
- Currently, the LWG has raised a dispute over the Feasibility Study which will be resolved through EPA's response to comments.

- When invited for a second consultation to discuss the Proposed Plan, the Yakama Nation declined the invitation and requested instead to consult with the Administrator as the signing official.

III. KEY ISSUES

- In the Proposed Plan, EPA's preferred alternative is Alternative I with on-site disposal of some material.
 - This alternative includes construction within 291 acres of contaminated sediments and 19,472 lineal feet of river bank using capping, dredging almost 2 million cubic yards of contaminated material out of the river, and Enhanced Natural Recovery.
 - An additional 1,876 acres contaminated sediment will be remediated through Monitored Natural Recovery. Disposal for Alternative I would include an on-site disposal in a Confined Disposal Facility and off-site disposal facilities.
 - Alternative I will take approximately 7 years to construct with a present value of \$745,660,000.
- The Yakama Nation has said that the EPA is not doing all it should to protect tribal members according to its treaty rights.
 - In written comments to the NRRB, which reviewed the site in November 2015, the Yakama Nation offered the following summary statement, along with more specific goal statements and technical comments.

We are stressing the importance of protective and permanent remedial actions at the site. Active remediation by removing contaminated sediment from the lower Willamette River must be the preferred alternative to ensure that the river effectively reaches the long term remedial goals. The lower Willamette River must be restored to support healthy natural resources and to produce fish that are safe for human consumption, in order to protect the Columbia River.

- During the February 2016 government to government consultation, the Yakama Nation Tribal Council presented Dennis McLerran and Jim Woolford with a resolution (attached to background paper for the consultation) regarding cleanup of Portland Harbor. Following is an excerpt of the resolution:

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in Regular Session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, with a quorum being present, that the Yakama Nation demands EPA, as Trustee, to uphold its trust responsibility to protect Yakama Nation Treaty Rights and Resources and that EPA shall mandate a cleanup within the ROD at the Portland Harbor Superfund that is protective of all Yakama Nation members from the toxics from this site and provides for the safe consumption of fish and traditional use of our Treaty Reserved Resources.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this resolution for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

- Now, during the public comment period, the Yakama Nation is reaching out to educate and encourage comments from the general public. Key messages from the Yakama Nation are captured on a website that encourages people to submit the following message to EPA. The Yakama Nation plans to forward copies of comments submitted via this website to elected officials:

The proposed cleanup of Portland Harbor is a big win for industry and a bad deal for the public. EPA's cleanup proposal tackles just 8% of a site area that is 100% toxic. A more aggressive plan is needed to prevent even more harm to human health and the environment. On behalf of all people who rely on the river for food, recreation, employment and culture, I urge the EPA to implement a plan that:

- Moves quickly and sustainably reduces contaminants causing harm to Willamette and Columbia river resources
 - Includes ongoing monitoring and cleanup upriver and downriver from the site
 - Contributes to healthy fish that are safe to eat for all people
 - Holds polluters accountable for creating a safer Portland Harbor
- Superfund will not be able to take the site back to its pristine state, but rather attempts to provide a level of active cleanup that will ensure monitored natural recovery has the best chance of success.
 - EPA is focusing on the Willamette River at this point. EPA is going to be evaluating the cleanup in part based on its ability to reduce loading from the Willamette into the Columbia River.
 - The Yakama Nation will want to see EPA explicitly looking at past impacts to the Columbia River from Portland Harbor now.
 - Upstream of the lower 12 river miles of the Willamette, the State of Oregon DEQ will be working to reduce loading to the site to ensure the remedy can be successful. Tools they will use will include both cleanup (e.g. site specific cleanup caps) and water authorities (e.g. TMDLs). Immediately upstream of the areas subject to the EPA ROD, DEQ will be pursuing active cleanup at significant sites such as PGE transformer sites, and a manufactured gas plant site in the downtown reach. Likewise, EPA will work with its partners including USACE to ensure that upstream in river work in contaminated areas helps the cleanup's success.

IV. NEXT STEPS/UPCOMING DEADLINES

The Proposed Plan release triggered a public comment period that is now 90 days (to September 6). The Region, in coordination with EPA Headquarters, will develop a response to all comments received during the public comment period. Additionally, a response will be developed for disputes that were raised during the dispute time period. Comments raised by the Yakama Nation as part of the consultation will be incorporated into the response to comments.